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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. ____

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now J. R. Mason, the above named petitioner, *pro se,* and respectfully petitions this Honorable Court for the issuance by it of its writ of certiorari, addressed to the said United States Circuit Court of Ap-

peals for the Ninth Circuit, directing said Court to certify the above entitled cause to this Court for review and final decision.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This proceeding, bottomed on the provisions of Chap. IX of the Bankruptcy Act (11 USCA 401-403, P.L. 481, Ch. 532, Stat. Sec. 13) involves a statutory trust of restricted land, within the dominion and sovereignty of the State of California, and two claims upon its rents, issues and profits.

The Reconstruction Finance Corporation holds one contract, made in 1934. (R. 74/86. *Mason v. Paradise I. D.*, Case No. 306, Oct. Term, 1945.)

Petitioner duly filed his proof of claim March 10, 1938 (R. 25; No. 306) as the bona fide owner and holder of $29,000 Paradise Irrigation District valid, binding and unpaid original General Obligation 6% Gold Bonds, issued in 1917 and 1920, and secured by unlimited ad-valorem land taxes and other sources of revenue pledged in the applicable state laws.

The present lawful value of petitioner's claim, with statutory interest, is more than $50,000. Its lawful force and effect and validity is not questioned. Petitioner never submitted his claim to the jurisdiction of the Bankruptcy Court, nor to the Plan of Composition. (R. 138; No. 306.) As full payment for this claim, petitioner is offered $15,231.09 (R. 4) on condition that he accept it within the year, or get nothing

at all, and be forever restrained from "asserting any claim or demand whatsoever". (R. 31.)

On May 22, 1934, the R.F.C., acting under the provisions of Sec. 36, part 4, of the Emergency Farm Mortgage Act of 1933 (43 U.S.C. Sec. 403) made a refinance contract. (R. 74; No. 306.) This contract in no way involved or impaired the lawful force and effect of the bonds owned by petitioner. All the provisions in the contract held by the R.F.C. have been duly complied with by respondent, and the Plan of Composition provides for no concession whatever by the R.F.C., the sole creditor consenting to the Plan. No proof of claim was filed at any time by the R.F.C., but its "consent" to the so-called "plan" is shown. (R. 12; No. 306.) The provision in the R.F.C. contract that it would not have to disburse its loan until the holders of all the original bonds "had agreed to make their bonds available for refinancing" (R. 8; No. 306) was waived and became ineffective when the R.F.C. decided that enough original bondholders had agreed to sell their bonds "to enable said District to reduce and refinance all or by far the greater part of such existing debt" (R. 75; No. 306) and disbursed the proceeds of its loan to the District. (R. 118/122; No. 306.) Therefore, any impression that might otherwise exist "that the loan would not be disbursed until the holders of all of the principal amount of the District's outstanding bonds had agreed to make their bonds available for refinancing" (R. 8; No. 306) is wholly unwarranted. Nothing in the contract between the District and the R.F.C. affects or impairs the full

force and effect of the bonds owned by petitioner. (R. 92; No. 306.)

The identical Plan of Composition, as in this proceeding, was tried by respondent, without success in 1936. (R. 86/89; No. 306.) That judgment had become *res adjudicata* long before the instant proceeding began. (*Chicot Co. Dr. Dist. v. Baxter State Bank*, 308 U.S. 371.) Petitioner's rights had become *res adjudicata*, under the Federal rule applied by this Court in the *Chicot* case, supra, before the instant proceeding was commenced. The present petition for composition filed in 1937 asked the District Court to enter an injunction "restraining * * * the levy of any tax or assessment * * * during the pendency of this proceeding * * *". (R. 4; No. 306.) This injunction was ordered, and an interlocutory decree was entered, restraining petitioner "pending the entry of the final decree * * * from attempting collection * * * by legal proceedings or otherwise." (R. 53; No. 306.)

Upon learning of the form of the proposed final decree, petitioner duly filed his objections, including his objection to "that part of the proposed final decree which provides that the holders of certain bonds are restrained and permanently enjoined from asserting any claim or demand whatsoever * * *". (R. 5/21.)

Respondent did not deny that the bankruptcy jurisdiction authorized under Ch. IX allows no restraint and permanent injunction in a final decree, but merely argued that the objections were "completely and

wholly beside the point in question and the legal matter involved, namely the form of the decree." (R. 23.)

The District Court issued no opinion, and did not strike the permanent injunction restraining the assessment and collection of taxes. (R. 26.) Notice of Appeal was dully filed. (R. 32.) Statement of points on appeal. (R. 33.) Under point No. 7 it was urged "The injunctive provisions in the final decree, as applied, are an error of law * * *". Transcript of record was printed, and appellant's opening brief was printed April 9, 1948 and duly filed in the Circuit Court. Instead of submitting a reply brief, respondent filed motion to dismiss the appeal, on the allegation: "That the subject matter of the present appeal was the subject matter of the appeal heretofore made * * * that the decision above cited (326 U.S. 536) is *res adjudicata* as to all points raised on this appeal, and as to all points which could be raised; a new point raised, if any, is frivolous." (R. 46/52.)

Obviously it would have been impossible to have objected to this permanent injunction in the final decree, in the appeal from the interlocutory decree. The final decree had not been entered when petitioner was before this Court in Case No. 306, Oct. Term, 1945, therefore this proceeding is not "*Res adjudicata* * * * as to all points which could be raised on this appeal". This Court has never indicated that the Federal statutes prohibiting coercive judicial orders or decrees "restraining the assessment or collection of any tax" (Rev. St. § 3224, 26 USCA § 1543) may be ignored or circumvented in a Ch. IX proceeding.

Ch. IX only allows injunctions "pending the determination of the matter". (11 USCA 403(c).)

Over vigorous objections to the motion to dismiss the appeal (R. 52/63), and without the submission of any reply brief by respondent, the motion was allowed by the Circuit Court of Appeals (R. 64), without opinion upon any of the specifications of error presented in petitioner's brief (R. 33, 34), each of which points was supported by controlling decisions of this Court and the California Supreme Court. The statement of points on appeal (R. 33, 34) raised Federal questions necessary to the proper determination of the appeal. The dismissal of the appeal, without opinion upon any of the points presented, is adverse to petitioner. There are no other grounds, outside the Federal question upon which the judgment in the final decree, as applied was predicated, or might stand.

OPINION BELOW.

No opinion upon the objections to the form of the final decree was issued by either the District Court or the Circuit Court of Appeals. The order of the Circuit Court granting the motion to dismiss the appeal is shown. (R. 64.)

JURISDICTION.

The order and decree of the Circuit Court of Appeals was entered May 7, 1948. (R. 64.) The juris-

diction of this Court is invoked under Section 240(a) of the Judicial Code. (28 USC, sec. 347(a).)

QUESTIONS PRESENTED.

1. Whether the injunction provision in the final decree, permanently restraining suits for the assessment and collection of land taxes required by applicable state law and decisions, conflicts with 28 USCA § 41(1), Rev. Stats. § 3224, 26 USCA § 1543, and Sections 64a, 67b, and 83 c, i., of the Bankruptcy Act, and also deprives petitioner of the equal protection guaranteed by the 5th and 10th Amendments?

2. Whether the time limitation of 12 months, after which period the money *in custodia legis* will be paid to the bankrupt, whether allowed claims have been paid or not, conflicts with 11 USCA § 106, sub. (b), and Judicial Code, Secs. 851, 852, Title 28?

3. Whether Ch. IX of the Bankruptcy Act allows coercive jurisdiction to abrogate land taxes, tax liens and encumbrances created by state law and decisions?

4. Whether the previous denial of discharge is *res adjudicata*?

5. Whether the Circuit Court of Appeals erred in granting the motion to dismiss the appeal without opinion upon any of the eight points raised in the appeal and submitted in appellant's opening brief?

6. Whether the pledge of a sovereign state to exercise its constitutional power to tax the rent value of

restricted land is subject to coercive bankruptcy jurisdiction?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The state law which governs and controls the rights, powers and duties of respondent and the separate contract obligations of both the R.F.C. and petitioner, is Stats. 1897, p. 254; Deering's General Laws, Act 3854, p. 1792, now codified as Water Code of California, Stats. 1943, Chap. 368, Secs. 20000 to 27758. The fund *in custodia legis* is governed by Jud. Code, Secs. 851-852, Title 28; and 11 USCA § 106 sub. (b). The base of this proceeding is Ch. IX of the Bankruptcy Act, 11 USCA §§ 401-403, as amended. The Federal constitutional provisions are Art. I, sec. 10, clause 1 and the 5th and 14th Amendments.

REASONS WHY THE WRIT SHOULD BE ALLOWED.

1. The District Court erred in permanently restraining suits to compel the assessment and collection of the ad-valorem land taxes required by applicable state law.

2. The District Court erred in ordering the fund *in custodia legis* to be paid to the bankrupt, before all allowed claims upon that fund have been paid.

3. The Court below erred in not confining its final decree to the jurisdictional limits allowed by the United States Constitution.

4. The Court below erred in failing to decide that the prior denial of discharge is *res adjudicata.*

5. The Circuit Court erred in granting the motion to dismiss the appeal without opinion upon any of the points raised in the appeal.

PRAYER.

Wherefore, petitioner prays that this Court issue its writ of certiorari, directed to the Circuit Court of Appeals of the United States, Ninth Circuit, directing said Court to certify the said cause up to this Court, and that this Court upon the filing of the record herein and after appropriate proceedings herein, order the injunction in the final decree stricken; and that petitioner be granted such other and further relief as may to this Court appear just and proper.

Dated, San Francisco, California,
July 15, 1948.

Respectfully submitted,
J. R. MASON,
Petitioner, Pro se.

In the Supreme Court
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United States

OCTOBER TERM, 1948

No. .....

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

FACTUAL BACKGROUND.

This Court has adhered steadfastly to the fundamental principle that "* * * as to the power to borrow money neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each." (*Pollock v. F. L. & T. Co.*, 157 U.S. 429.)

In the recent case of *U. S. v. Carmack*, 67 S.Ct. 252, it was said:

> "If the United States have the power it must be complete in itself. It can neither be enlarged or diminished by a State. * * * The consent of a State can never be a condition precedent to its enjoyment."

The Congress has not laid any direct ad-valorem tax on land since 1823. (Ch. 37, Laws 13th Cong.) Such a tax statute, enacted in 1861 was repealed, quickly. (Ch. 45, Laws 37th Cong.)

The question was argued in The Federalist Essays, where the leading Federalist, Alexander Hamilton, said in Essay XXXIII:

> "Though a law, therefor, laying a tax for the use of the United States would be supreme in its nature, and could not be legally opposed or controlled, yet a law for abrogating or preventing the collection of a tax laid by the authority of the State (unless upon imports or exports), would not be the supreme law of the land, but a usurpation of power not granted by the Constitution. * * * If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths."

In the *U. S. v. Bekins,* 304 U.S. 27 case, which held the Federal law on which this proceeding is based "Not unconstitutional", it was carefully pointed out

> "* * * that Sec. 83-e, provides as a condition of confirmation of a plan of composition that it must appear that the petitioner 'is authorized by law

> to take all action necessary to be taken by it to carry out the plan' and, if the judge is not satisfied on that point as well as on the others mentioned, he must enter an order dismissing the proceeding. The phrase 'authorized by law' manifestly refers to the law of the State."

The State law governing and controlling the rights and obligations of petitioner and respondent, and also controlling the contract of the R.F.C. and tax obligations of all owners, holders and users of land within Paradise Irrigation District, Butte County, California, is Stat. 1897, p. 254, as amended; Deering's General Laws, Act 3854; Water Code of California, Stat. 1943, Ch. 368, Secs. 20000 to 27758.

The first attack against this venerable State law to reach this Court established clearly and unequivocally that the act involves land taxes imposed by authority of the State, saying in *Fallbrook I. D. v. Bradley*, 164 U.S. 112 at p. 176:

> "* * * although there is a marked distinction between assessments for a local improvement and the levy of a general tax, yet the former is still the exercise of the same power as the latter, both having their source in the sovereign power of taxation."

There is perhaps no land tax statute, which has been the subject of more frequent litigation, in both State and Federal Courts than this one, all of which cases will be clouded, if not wholly nullified, if the final decree, as applied by the United States District Court in this proceeding is not disallowed by this Court.

The bonds owned by petitioner are Federal Income Tax exempt, and have been twice so held by the United States Attorney General in 30 Ops. 252 (1914) and in 38 Ops. 563 (1937).

If Chap. IX of the Bankruptcy Act, the base of this proceeding, had been based on the tax clause, and had subjected to Federal income tax the bonds of such issues only where a per cent of the bondholders had consented to Federal taxation, leaving other similar bond issues tax exempt, its lack of uniformity would be at once apparent. But Ch. IX leaves immune from Federal bankruptcy jurisdiction all similar bonds, unless the holders of ⅔ or more of the bonds allow the jurisdiction. The Circuit Courts are in serious conflict, some holding that Chap. IX "* * * is dependent on State consent, and is limited to that consent". *Green v. City of Stuart,* 135 F.2d 33 (CCA 5). In the Seventh Circuit, it is held that the Federal jurisdiction authorized in Ch. IX makes State consent unnecessary. *In re S. Beardstown Dr. Dist.,* 125 F.2d 13.

It is submitted that

> "Neither consent nor submission by the States can enlarge the powers of Congress." *U. S. v. Butler,* 297 U.S. 1.

Certainly it must also follow that

> "Neither consent nor submission by some bondholders can enlarge the powers of Congress."

> "The rule is well settled that creditors may enter into and bind themselves by a composition

agreement. * * * But it is also settled that those who do not enter into the agreement can not be bound thereby. (Citations.) Such is the rule in this State."

Dundee v. Pressgrove, 15 So. 2d 448 (Fla. Sup. Ct.)

Such is also the rule in California applicable to the statutory claim owned by petitioner who never did "enter into the agreement and can not be bound thereby." (R. 92; Case No. 306, Oct. Term, 1945.)

That no majority can ever deprive minority bondholders of their statutory rights under applicable California law was settled in *Selby v. Oakdale I. D.,* 140 C. A. 171.

Petitioner has regularly presented his bonds and coupons for payment or registration, as they matured, consisting of bond coupons due July 1, 1936, et seq., and bond principal due July 1, 1937, et seq. (R. 139; Case No. 306.) These claims when so presented are construed as a final judgment, and as rights which have become vested. *Moody v. Prov. I. D.,* 12 Cal. 2d 389. Such claims are explicitly excepted from Federal jurisdiction by the provisions of Sec. 83(c), but the final decree, as applied in this case accords petitioner's claims no such recognition.

Petitioner does not question the right of the R.F.C. to the full payment of its contract with respondent. That contract will not in any respect be infringed or impaired no matter what happens to this petition. The R.F.C. yielded nothing whatever by "consenting"

to the Plan of Composition, and has, at all times been in a supreme and commanding position to take jurisdiction away from the Bankruptcy Court unless its ideas dominated. (R. 179-e; No. 306.)

Both principal and interest upon the contract between respondent and the R.F.C. have been fully and regularly paid all these years, while the money due petitioner has been unlawfully denied him and given to the R.F.C. (R. 139; No. 306.) The money, on deposit with the District Court and offered as full payment is much less than the statutory interest alone on his claim.

According to Sec. 83(d) the consent of the R.F.C. to this proceeding is not of any force or effect, because the R.F.C. is not affected adversely by the Plan, and nothing in the record suggests it would be.

Petitioner is thus caught between pressure originating in the R.F.C., and a struggle not alone to defend his vested rights as an investor in the lawful bonds of another Government, but to defend fundamental law as it has been construed and applied by this Court before and since the *Bekins* case, supra.

Further and not less important is that fact that the unrestrained operation of this venerable California law for over sixty years, has advanced and always protected the equal right of all persons to acquire, use and hold land, as that equal right was very recently construed by this Court in the *Shelley v. Kraemer* case on May 3, 1948, 68 S. Ct. 836.

The land in Paradise Irrigation District is all within the dominion and sovereignty of California and the power of California to control its devolution or private ownership is paramount. *Blythe v. Hinckley,* 180 U.S. 333, 341; *Skaggs v. Comm.,* 122 F.2d 721 (cert. denied 315 U.S. 811).

That private holders of such land can not invoke Federal bankruptcy jurisdiction when land assessments are not paid was reaffirmed in *Fallbrook v. Cowan,* 131 Fed. 2d 513. Despite the vigorous protests by counsel for Mrs. Cowan, certiorari was denied in *Cowan v. Fallbrook,* 320 U.S. 735.

Respondent has no standing or authority to invoke the bankruptcy jurisdiction in order to escape its duty to assess and collect the ad-valorem land assessments made mandatory by applicable State law, and can get no authority to violate the laws of its creator, the State of California, by consent from the R.F.C.

In "A Study in Central Valley of California on Effects of Scale of Farm Operations", Senate Committee Print, No. 13, 79th Cong. 2d Sess., pursuant to S. Res. 28, appears the following:

> "Establishment of an Irrigation District under the original Wright Act (Stat. 1897, p. 254) made it advantageous to subdivide and sell the land. Thus the Dinuba water supply was a responsible agent in establishing farm size in that community."

The basic reason why this law protects the equal right of all persons to acquire, use and hold land, is traceable to the principle employed for raising the

funds required by the Districts to meet their obligations.

All buildings and improvements are expressly exempted from tax. Stat. 1943, Ch. 368, Sec. 25500. Each District shall levy an assessment upon the land within the district in an amount sufficient to raise money to pay principal and interest of all bonds that have matured or that will mature before the close of the next ensuing year, Sec. 25650. If the assessment is not paid within 3 years, full title escheats to the District "free of all encumbrances", Sec. 26300. Thereafter, the District is free to administer the land as a beneficent landlord, and to collect its "rents, issues and profits", Sec. 26301. This provision was affirmed in *Provident v. Zumwalt*, 12 Cal. 2d 365.

The higher the annual ad-valorem land assessment, the lower will be the cost for homeseekers acquiring the title deed to this land. Adam Smith, Wealth of Nations, Bk. 5, c. 2 (1776); J. S. Mill, Principles of Pol. Economy, Bk. 5, c. 2, § 2 (1884); Ricardo, Principles of Pol. Economy, 221-4 (1817); Seligman, The Shifting and Incidence of Taxation, c. 3 (1910); James Mill, Political Economy, 253 (1826); Buttenheim, Unwise Taxation as a Burden on Housing, 48 Yale L.J. 240 (1938); Silverman, Municipal Real Estate Taxation as an Instrument for Community Planning, Yale L.J., Dec., 1947.

This principle of taxation has stood the test of time, and the taxpayers under this law generally, which law applies to some 4 million acres of the most desirable rural and urban land in California today

and occupied by more than a half million people, have had time to assay such resolutions, as the following by the Board of Directors of Oakdale Irrigation District in 1914:

> "Our experience has taught us that the more you relieve improvements from taxation, the quicker will the community improve. * * * Our farmers put the land to its highest use, the use that is most beneficial to the whole community; our system of taxation compels them to do this, and they reap a greater profit for themselves. * * * We make the man who keeps his land idle pay the same (tax) as the man who improves."

Viewed in this light, the California Irrigation District law is a rent control statute. The higher the annual ad-valorem land assessment, the less net rent will remain for any landlord to capitalize into price demanded for title deed to the land. The disallowance of the money lawfully belonging to petitioner, would have one effect, and one only. It would not affect the rent value of any land in this district, but would only increase the net rent, after taxes, which land speculators could and would capitalize in the price thereafter demanded for title deed to the land. Obviously, if the bond obligations of such a district are reduced, the annual ad-valorem land assessment can then be reduced correspondingly, and other things remaining equal, the price of title deeds to land rises.

Thus, the effect of the final decree, as applied, is not only to deprive petitioner of his statutory rights secured by the Constitution, but also to infringe the

equal right of all persons to acquire, use and hold land guaranteed by the 14th Amendment, as construed in the *Shelley* case, supra.

The land and tax laws of every State today discriminate against the landless, in favor of the landed. If the States are ever to obey the command in the 14th Amendment, their power to enact and apply such nondiscriminatory land tenure statutes as the California Irrigation District Act must be exercised and no delinquency in the lawful administration of the State's trust in such lands should be sanctioned by the Federal judiciary, whether with or without the consent of the State or the R.F.C.

ARGUMENT.

I. THE DISTRICT COURT ERRED IN PERMANENTLY RESTRAINING SUITS TO COMPEL THE ASSESSMENT AND COLLECTION OF AD-VALOREM LAND TAXES, REQUIRED BY APPLICABLE STATE LAW.

Respondent's duty to levy and collect land assessments is a continuing duty, differing basically from that created by ordinary special assessment statutes.

Farwell v. San Jacinto etc. I. D., 49 Cal. App. 167;

Rialto I. D. v. Stowell, 246 Fed. 294;

Am. Sec. Co. v. Forward, 220 Cal. 566 (affirmed sub. tit. *Irones v. Am. Sec. Co.*, 294 U. S. 692);

Provident v. Zumwalt, 12 Cal. (2d) 365;

Moody v. Provident, 12 Cal. (2d) 389.

The petition which forms the base of this proceeding sought an injunction "restraining * * * the levy of any tax or assessment * * * during the pendency of this proceeding * * *". (R. 4, Case No. 306.)

The injunction was granted and interlocutory decree was entered restraining suits "pending the entry of the final decree". (R. 53, No. 306.)

Manifestly the final decree not then having been prepared or entered, the question of whether this form of permanent injunction may be validly included in a final decree in a Chapter IX proceeding could not have been raised in the previous appeal from the interlocutory decree.

On receiving the form of the proposed final decree, petitioner duly filed specific objections to its form, especially "to that part of the proposed final decree which provides that the holders of certain bonds are restrained and permanently enjoined from asserting any claim or demand whatsoever * * *". (R. 5/21.)

Respondent ignored this objection, and contended the objections were "completely and wholly beside the point in question and the legal matter involved, namely the form of the decree." (R. 23.)

The District Court signed and filed the final decree without expressing any opinion in writing, and allowed the permanent injunction in the decree, over petitioner's timely objection. (R. 26.)

The Circuit Court ordered no change in the final decree, as requested upon appeal, and granted re-

spondent's motion to dismiss the appeal, without opinion on any of the points raised on appeal. (R. 65.)

Petitioner's objections to the motion to dismiss the appeal are printed. (R. 52/63.)

It is submitted that the permanent injunction, as applied in the final decree goes beyond the petition, and beyond the interlocutory decree, which allowed the injunction only "pending the entry of the final decree", and this permanent injunction, as applied to the valid, binding and unpaid bonds "* * * whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught * * *" and providing that "the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever * * *" (R. 31) is not warranted in law or equity.

Such an injunction can have one force and effect only, which is to restrain the assessment and collection of ad-valorem land taxes, contrary to the applicable and controlling State law, as construed and applied in the cases above shown.

This injunction, under the circumstances here, also conflicts with the applicable Federal bankruptcy statutes, in Sec. 64a, 67b, 83 c, i; 28 USCA § 41(1); 28 USCA § 124a; 11 USCA § 1; 40 USCA § 258a; Sec. 3466, R. S.; 28 USCA § 379; Rev. Stats. § 3224, 26 USCA § 1543; 11 Am. Jur., Conflict of Laws, § 30; Sec. 17, Comp. St. § 9601; Restatement of Conflict of Laws, Sec. 243.

An attempt to invoke Federal jurisdiction to enjoin waste and misuse of funds by district officials was not allowed in *Marra v. San Jacinto etc. Irr. Dist.*, 131 Fed. 780 (CCSD Cal. 1904).

The Supreme Court of California has decided that all land and property of an irrigation district is property owned by the State, dedicated for the uses and purposes of the Irrigation District Act, one of which is the payment of every bond in full. *El Camino v. El Camino*, 12 Cal. (2d) 378; *Shouse v. Quinley*, 3 Cal. (2d) 357. (Stat. 1943, Ch. 368, sec. 24504.)

Respondent is the alter ego of the State, without pecuniary rights, and hence its statutory land tax affairs are as immune from Federal interference or restraint, as the affairs involved in *Cargile v. N. Y. Tr. Co.*, 67 Fed. (2d) 585, 588 (CCA 8); *Ex parte Ayers*, 123 U. S. 443; *Phipps v. School District*, 111 F. (2d) 393; *In re Ingersoll Co.*, 148 F. (2d) 282 (CCA 10); *Ark. Corp. v. Thompson*, 312 U. S. 673, 313 U. S. 132; *Lyford v. N. Y.*, 140 F. (2d) 840 (CCA 2), affirmed in *Bankers Tr. Co. v. N. Y.*, 323 U. S. 714; *Gardner v. N. J.*, 329 U. S. 565.

Article IV, Section 31 of the California Constitution reads as follows:

> "The legislature shall have no power * * * to make any gift *or authorize the making of any gift of any public money* or thing of value to any individual, municipal or other corporation whatever." (Emphasis supplied.)

Article IV, Section 16 prohibits

> "* * * releasing or extinguishing in whole or in part, the indebtedness, liability or obligation of any corporation or person to this State, or to any municipal corporation therein."

The only effect of the injunction in this final decree would be to give "public money" lawfully belonging to petitioner, a *cestui que trust,* to the present holders of title and mortgages upon the taxable land within the District, because the future ad-valorem taxes would be reduced in the same amount as is taken from petitioner by the injunction. This would be violently objected to, if an action of a Federal Court had the effect of increasing ad-valorem land tax rates above the rate allowed by State law. There is no tax rate ceiling in the applicable State law here involved and no decision by this Court holds that it is permissible under any provision in the United States Constitution to increase or decrease ad-valorem State or local land assessments contrary to applicable State law and decisions.

> "We can not presume that the public policy of the United States manifests a lesser concern for the protection of such basic rights against discriminatory action of Federal Courts than against such action taken by the Courts of the States."
>
> *Hurd v. Hodge,* 68 S. Ct. 847.

The injunction in the final decree, as applied, deprives petitioner of his Constitutional and statutory rights secured by the Fifth and Tenth Amendments to the United States Constitution, upon the grounds

and for the reasons above shown, and it ought to be disallowed by this Court, not only for that reason, but for the equally important reason that it coercively interferes with the assessment and collection of direct ad-valorem land taxes required by the Constitution and applicable California laws and decisions of this Court and the controlling California cases.

II. THE LOWER COURT ERRED IN ORDERING THE FUND IN CUSTODIA LEGIS PAID TO THE BANKRUPT BEFORE ALLOWED CLAIMS ARE PAID IN FULL.

The final decree provision objected to under this point is shown in (R. 30) under heading subs. (b), (c). It offers petitioner the sum of $15,231.09 for his claim (with a present lawful value of over $50,000) on condition that he accept this amount within 12 months, and surrender his bonds and coupons within that time. After 12 months the money is given the bankrupt, irrespective of whether the allowed claims have been paid in full, or not. Thereafter, the holders of original bonds are "hereby forever restrained and enjoined" from asserting any claim or demand.

The original bonds owned by petitioner are in the possession of petitioner, and have never been submitted to the jurisdiction of the bankruptcy Court. This is shown by petitioner's proof of claim (R. 161, No. 306) as follows "* * * this proof of claim does not submit himself to the jurisdiction of this Court except for the special purpose of objecting to the jurisdiction of this Court."

They are valid, binding and unpaid statutory trust obligations, independent of and wholly unaffected by the 1934 contract between respondent and R.F.C.

Now petitioner has been told that he may have $15,231.09 for his statutory claim with a present lawful value of over $50,000, providing he accepts that offer within 12 months, and that otherwise the bankrupt is allowed to claim the fund in *custodia legis*, and is discharged from ever paying anything at all upon its still outstanding original bonds "affected by the plan". (R. 31.) If this was an eminent domain action and a landholder was offered a sum of money approved by the Court upon the condition that he take the money within one year, or else lose his land and receive no compensation, the harshness of this coercive provision in the instant decree would be self evident.

> "The authority conferred on this Court by Sec. 30 of the Bankruptcy Act to prescribe all necessary rules, forms, etc. * * * is plainly limited to provisions for the execution of the Act itself, and does not authorize additions to its substantive provisions."
>
> *Meek v. Contu Co. Banking Co.*, 268 U.S. 426.

There is clearly not any authority in the Act which forms the base of this proceeding, for such a time limit or coercive forfeiture provision. (11 USCA § 403.) Claims upon such a fund, once deposited *in custodia legis* can be paid only as authorized in Judicial Code, Secs. 851-852, Title 28 and in 11 USCA, Sec. 106, sub. b.

In the very recent case of *In re Searles,* 166 F.2d 475, the Second Circuit Court indicates that this Court has never passed upon the right of a discharged bankrupt to claim such a fund, while allowed claims on it are unpaid. The Court left no doubt that it believes a discharged bankrupt can not claim or get such money until after all allowed claims upon it are paid in full.

In *Louisville & R.R. Co. v. Robins,* 135 F.2d 704, the Fifth Circuit Court issued an exhaustive opinion upon the law governing similar funds placed *in custodia legis* under another Bankruptcy Act, which contained more specific provisions for the execution of the Act, than does Ch. IX:

> "A surplus of funds in custodia legis, arising *after payment of principal claims* in a bankruptcy, * * * may be devoted to payment of interest on such claims." (Emphasis supplied.)
>
> *Kiyoichi v. Sunrise,* 158 F.2d 490 (CCA 9).

In *Compton-Delevan I. D. v. Bekins,* 150 F.2d 526 (CCA 9), it was squarely held that such a fund, even when unclaimed within the 12 month time limitation in the final decree, should not have been given the bankrupt.

In *U. S. v. Greer Drainage Dist.,* 121 F.2d 675 (CCA 8), it was held that funds claimed by the District were funds "of the bondholders, the District being as to it (the fund) but a trustee for them."

This is also the law in California. *El Camino v. El Camino* and *Moody v. Provident, supra.*

> "The levying of State taxes upon the title of private landholders * * * impairs the exercise of no Federal function. The private holders of land never enjoy tax immunity as a right * * *"
>
> *Petition of S. R. A.*, 18 N.W.2d 442, affirmed *S. R. A. v. Minnesota*, 327 U.S. 558.

The objections to this coercive forfeiture provision were presented to the District Court (R. 5/7) and argued, with many citations. (R. 7/21.) Respondent did not answer this objection to the form of the proposed final decree, but merely said: "The writer is not replying to the brief directly, inasmuch as it is completely and wholly beside the point in question and the legal matter involved, namely, the form of the decree." (R. 23.) In his reply brief, petitioner commented, "The bald contention that the proposed final decree 'is in conformation with the decisions of the U. S. Supreme Court', without any supporting citations, is mere wishful hoping." (R. 25.)

> "To effect a forfeiture, which the law does not favor, the evidence must be clear and convincing and must not call upon a Court of equity to do an inequitable thing."
>
> *Hendrix v. Altman Lbr. Co.*, 145 F.2d 501 (CCA 5).

The forfeiture provision in the final decree is clearly not authorized for the execution of Ch. IX of the Bankruptcy Act, it is not warranted by any statute or decision by this Court, and it is prejudicial to petitioner's statutory right to bring suit in a State Court to compel the assessment and collection of taxes

to pay his statutory trust claim according to applicable State law. The State of California, unlike a private bankrupt, is entitled to no Federal protection against holders of its lawful statutory obligations, or of its political subdivisions. The State itself could prohibit suits, and successfully get out of paying its bonds, without Federal coercive jurisdiction or intervention. *Monaco v. Mississippi,* 292 U.S. 313.

Therefore, it is submitted that the 12 months' forfeiture provision in the final decree ought to be stricken by this Court.

III. CHAP. IX OF BANKRUPTCY ACT ALLOWS NO COERCIVE JURISDICTION OF THE BANKRUPT OR OF MINORITY CREDITORS.

Paradise Irrigation District is the State itself operating through the District in the performance of a Constitutional State function. The object is to reclaim and make more fruitful otherwise arid or semi-arid lands, and insure the equal opportunity for farm, orchard and home seekers to acquire, use and hold good land, with a dependable supply of water.

When bonds are voted and sold, the bonds constitute a general obligation payable from unlimited annual assessments upon all the land within the District. When all landholders pay this assessment, the obligations of the District can be promptly paid, when lawfully due. When any land assessment is not paid, ownership revests in the District, and if not paid within three years thereafter, the privilege of re-

demption is at an end. Thereupon, the District has full authority to administer the land as a beneficent landlord, and collect its rents, issues and profits, and the rent collected is equally subject to the obligation in any outstanding bonds. The land itself is not lost, either to the District or to the bondholder, because if resold, it again becomes subject to assessment until all bonds are paid.

The Irrigation District Act is a complete statute, providing fully for the creation of the District, the ownership and devolution of land, the payment of lawful obligations, and dissolution of every District.

The force and effect of this law is in no manner changed by reason of the fact that the collection of certain assessments for some years was slow. The law protects the rights of the holders of each and every bond equally, and allows no majority to deprive the holder of even one bond of his statutory claim. *Selby v. Oakdale I.D.; Provident v. Zumwalt,* supra.

> "A State is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the State has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly civilized society."
>
> *Wisc. v. J. C. Penney Co.* 311 U.S. 435, 438.

The coercive jurisdiction, as applied in the instant final decree involves nothing less than a surrender of the sovereign taxing power of California, when exercised, to a feudal class.

"Behind the words of the Constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character. * * * The entire judicial power granted by the Constitution does not embrace authority to entertain such suits in the absence of the State's consent."

Monaco v. Miss., supra.

But here, the coercive jurisdiction objected to is bottomed on the bankruptcy clause, which needs no State consent, wherever it can reach without State's consent. Ch. IX, the base of this proceeding, contains "an express requirement that nothing shall be agreed on which the State law does not enable it to do." *Mission S. D. v. Tex.*, 116 F.2d 175 (CCA 5).

"An insolvent Mississippi Drainage District is not subject to having its affairs administered by a Federal Bankruptcy Court under Sec. 401, since State consent that District affairs may be so administered is indispensable."

Evans v. Bankston, 18 So.2d 301.

In *Spellings v. Dewey*, 122 F.2d 652 (CCA 8), an attempt to apply coercive jurisdiction to the bankrupt District, was disallowed under Ch. IX.

But, in *In re S. Beardstown Dr. Dist.*, 125 F.2d 13 (CCA Ill.), another Circuit Court holds that no State consent is needed, under Ch. IX.

The sovereign power of a State to tax land, when exercised, is supreme. *Adirondack Ry. v. N. Y.*, 176 U.S. 335; *Nashville etc. Ry. v. Browning*, 310 U.S.

362; 61 *Corpus Juris,* 76, 83, 84; *Pollard v. Hagan,* 3 How. 212.

The statutory claims of petitioner are dated 1917 and 1920. Hence the so-called State consent in this proceeding (Stat. 1939, Ch. 72):

(a) constitutes retrospective legislation and an impairment of contract, prohibited by other provisions of the Federal Constitution;

(b) attempts to delegate authority not otherwise provided in the Constitution, and in a manner not authorized;

(c) is not a consent of a State to be sued nor the consent to or waiver of a State right, but the effort to exercise authority otherwise prohibited to the State —the repudiation of its own statutory contract. In such circumstances, the consent is not a "waiver of sovereignty", but a surrender of sovereignty, prohibited by the California Constitution, Art. I, sec. 16.

The obligation of such a contract is impaired when any part of it is dispensed with by subsequent legislation. *Green v. Biddle* (1823), 8 Wheat. (21 U.S.) 1, 84.

Since the obligation of a contract includes the means by which it is to be paid, the "judicial department can not prescribe to the legislative department limitations upon the exercise of its acknowledged powers." *Meriwether v. Garrett,* 102 U.S. 472; *Von Hoffman v. Quincy* (1886), 4 Wall. (71 U.S.) 535; *Brown Crummer v. Paulter,* 70 F.2d 184 (CCA 10, 1934).

It has long been held that the express authority to exercise Federal Bankruptcy jurisdiction in fields allowed by the Constitution is "unlimited and supreme" (*Sturges v. Crowninshield,* 4 Wheat. 122 at 192); "unrestricted and paramount" (*Int. Shoe Co. v. Pinkus,* 278 U.S. 261, 265); or "plenary" (*Hanover Nat. Bank v. Moyses,* 186 U.S. 181, 187).

The jurisdiction of State Courts can not be subjected to orders of a Federal Court, to restrain or enjoin the assessment and collection of land taxes required by State law. *Ark. Corp. v. Thompson,* and *Gardner v. N. J.,* supra, *Billings v. Ill.,* 188 U.S. 97, 102.

The immunity of a State's power to tax land, when exercised, was not modified, but was reaffirmed by this Court in *U. S. v. Bekins,* 304 U.S. 27. (*"Mun. Debt Adjustments under the Bankruptcy Act",* Univ. Pa. Law Review, March, 1942, by Giles J. Patterson, Esq.)

In *Coyle v. Smith,* 221 U.S. 559 at 572, is a discussion on the futility of an attempt to enlarge the powers of Congress by consent of a State. See also *Federalist Papers,* 12, 30 to 36, 80, 81, by Hamilton.

In *Hopkins, etc. v. Cleary,* 56 Sup. Ct. 235, it was stated:

> "Aside from the direct interest of the state in the preservation of agencies established for the common good, there is thus the duty of the parens patriae to keep faith with those who have put their trust in the parental power."

The conflict between the interpretation of Ch. IX jurisdiction in the different Circuits, as above shown, and the fundamental function of the State which is interfered with by the injunction in the final decree below, present an important question which petitioner here raises, as an actual controversy, as the bona fide owner of valid, binding and unpaid statutory obligations, which are still in full force and effect under State law, and decisions.

IV. THE DENIAL OF DISCHARGE IN THE PRIOR CASE IS RES ADJUDICATA.

The identical plan of composition was filed January 14, 1936 in the same U. S. District Court. The petition was disallowed, discharge of respondent was denied, and no appeal was taken. (R. 86/89, Case No. 306.)

> "J. R. Mason appeared and filed an answer setting up the unconstitutionality of the Act and substantially the same defenses that he has set up in this pleading. He also filed a Motion to Dismiss, and this Court on October 28, 1936, entered a judgment of dismissal which has never been appealed from and is now final." (R. 88, No. 306.)

This judgment in favor of J. R. Mason is *res adjudicata* under the rule laid down in *Chicot Co. D. D. v. Baxter State Bank,* 308 U.S. 371, at 377:

> "There can be no doubt that if the question of the constitutionality of the statute (11 USCA 301-304) had actually been raised and decided by

> the District Court in the proceeding to effect a plan of debt re-adjustment in accordance with the statute, that determination would have been final save as it was open to direct review upon appeal."

More recently the Ninth Circuit Court ruled squarely in the case of *Shepherd v. McDonald,* 157 F.2d 467:

> "* * * denial of a discharge from the debts provable, or failure to apply for it within the statutory time, bars an application in a second proceeding for discharge from the same debts."

Thus, had petitioner ignored the petition filed by respondent in 1936, it could be effectively pleaded against petitioner now.

The instant, second petition, seeking to bludgeon petitioner into accepting the same plan of composition, was filed November, 1937. (R. 1, No. 306.)

The District Court, prior to the *Chicot County,* supra, rule, announced by this Court, refused to hold the prior judgment *res adjudicata,* saying:

> "That this Court finds that said proceeding so dismissed was based upon a law wholly null and void, and which conferred no jurisdiction upon the Court * * * and that petitioner herein is not barred in this proceeding by res adjudicata, or otherwise." (R. 38/39, No. 306.)

This same point was raised, and argued under Ninth Proposition, in petitioner's opening brief in the Circuit Court, under the heading "The discharge, as

applied, conflicts with the denial of discharge from the same debts, and which is res adjudicata".

The Circuit Court failed to express any opinion on the point, and it is respectfully requested that this Court give petitioner the protection that respondent would be entitled to, under the *Chicot* case, if the table was turned. The prior determination was final, and this proceeding involves a matter that is *res adjudicata,* and it ought to be dismissed, in favor of petitioner, whose vested statutory rights are not questioned. (R. 138/157, 162/163, No. 306.)

V. THE CIRCUIT COURT ERRED IN SUMMARILY GRANTING THE MOTION TO DISMISS THE APPEAL.

It is well settled that only lack of jurisdiction, or a defect in the steps taken to effect the appeal are grounds justifying the dismissal of an appeal upon a motion to dismiss. On a motion to dismiss the appeal, the Court does not look into the merits, but only examines the record for the purpose of seeing if the appeal was properly taken, and if the Court has jurisdiction. The cases so holding are uniform. *Hecker v. Fowler,* 1 Black. 95; *Sparrow v. Strong,* 3 Wall. 97; *Bohanan v. Nebraska,* 118 U.S. 231; *Lanier v. Nash,* 122 U.S. 630.

It was further shown, and not denied, that respondent wholly lacks the power to file such a motion, under the circumstances involved. (R. 52/63.)

Respondent filed no reply brief, while petitioner's brief had been printed and filed on April 9, 1948. (R. 63.)

The granting of the motion to dismiss, without opinion upon the points presented in the appeal (R. 64/65) was adverse to petitioner's rights, and he appeals to this Court for such protection as to it may seem proper and just.

SUMMARY.

The California Irrigation District Act is a land law, the full operation of which could never infringe the equal right of all persons to acquire, use and hold land, guaranteed by the 14th Amendment, as recently construed by this Court in the *Shelley v. Kraemer* case (May 3, 1948). But, the decree below, if it should be allowed to stand, will only serve to make this non-discriminatory land law, discriminatory, because the money taken from petitioner by the federal Court, will enrich only those now holding title to land in the community, and whose land taxes will be lessened by the amount taken from petitioner. If the command in the 14th Amendment is ever to be made practical, the sovereign power of the states to control the private tenure and devolution of land within its domain, must remain "independent and uncontrollable". (The Federalist, Essays, XII, XXX to XXXVI, Hamilton; 2 Vattell, Law of Nations (1883),

c. 8, §114; *Blythe v. Hinckley,* 180 U. S. 333, 341; *Heine v. Lev. Comm.,* 19 Wall. 655; *Road etc. v. M. P. R. Co.,* 274 U. S. 188.)

The mass strength of the feudal interests to circumvent any judgment by this Court that does not meet with their approval is great. The attacks on this Court in press and radio, after decision in the *U. S. v. California,* 332 U. S. 19 case is some indicator. When any law or decision strengthens feudal privileges little or no criticism is heard.

In "Fascism in Action" (House Document 401, 80 Cong. 1st Sess.), page 67, is reported:

> "Under Hitler, the efficient tax structure was centralized in the Reich, as distinguished from the Laender (States) and local units. The system was coordinated with Nazi grand strategy and further centralized. Administration was considerably tightened. It was directed that the tax laws should be interpreted in accordance with the national-socialist Weltanschauung; this became a source of very broad discretionary power."

This refers to the Reconstruction Act (Neuaufbaugesetz) of January 30, 1934, which provided in Article 1, "The representative assemblies of the States are abolished". Article 2 provided, "The sovereign rights of the States are transferred to the Reich".

In view of the fact that the Congress has exempted private holders of land from direct ad-valorem taxes for support of the Federal Treasury ever since Chap. 21, Laws 13th Cong., Jan. 9, 1815, except for Chap.

45, Laws 37th Cong., Aug. 5, 1861, which was quickly repealed, and in view of the widespread speculation in land, of which this Court may take judicial notice, it is certain that the investing public, and speculators think land title deeds a more promising investment than an investment in the field of production and distribution.

This may well be because they know that there is no federal tax on land held idle, and further that any state or local taxes which are paid, are deductible from the top bracket of federal income tax returns.

It is interesting that our first Chap. IX of the Bankruptcy Act was enacted the same year, 1934. (11 USCA §§301-304.) It was disallowed by this Court. (298 U. S. 513.) This doctrine of immunity was reaffirmed in *Brush v. Comm.,* 300 U. S. 352, 366-369, as to California irrigation districts. But, respondent was not convinced, and took another appeal, which was denied in *Merced I. D. v. Bekins,* 302 U. S. 709.

In the petition for a rehearing filed in *Pacific Nat. Bank v. Merced I. D. No. 591,* Oct. Term, 1940 by petitioner it was suggested (p. 13):

> "With the much heavier tax burdens now facing the people, plus the still heavier mortgages and private debts, it is petitioner's conviction that an enlargement of the bankruptcy power to include the taxing and borrowing power of the States, must prove more an aggravation than a cure, increasing the danger of inflation and the cost of National Defense."

Petitioner has filed many other petitions with this Court, in an effort to prevent the same centralization of power here, that proved so disastrous to the German people, and all people by World War II.

That some prominent men in public life now are taking alarm is shown by the testimony of Honorable Earl Warren, Governor of California, in Joint Hearings, re S.1988 (Tidelands Bill), 80th Cong., 2d Sess., p. 74:

> "We are asking Congress to confirm to us the fundamental State's rights which are essential to to the virility of the Republic. I am a believer in a strong central government within the limits of the Constitution, but I do not believe that the Federal Government should encroach upon the powers which were reserved to the States by the 10th Amendment to the Constitution."

Our late President F. D. Roosevelt said at Gainesville, Ga., March 23, 1938:

> "When you come down to it, there is little difference between the feudal system and the fascist system. If you believe in one, you lean to the other. With the overwhelming majority of the people I oppose feudalism * * *."

The "still outstanding obligations" consisting of $29,000 original, unrefunded gold bonds of Paradise Irrigation District owned by petitioner are constitutional and statutory land tax anticipation trust certificates, constituting a first charge upon the rents, issues and profits of all land within the district, un-

til they are paid, with statutory 7% interest if any payment is not made when lawfully due.

These obligations have never been surrendered by petitioner to bankruptcy jurisdiction, and petitioner's claim was filed only for the purpose of objecting to federal jurisdiction.

It is submitted that the bankruptcy clause, like other provisions in the Constitution must be read in conjunction with the 10th Amendment to the Constitution, which amendment presupposes the retention by the states of certain powers that historically belonged to the states. The bankruptcy clause does not extend to the power of a state to regulate and control the private tenure of land within its sovereign domain, provided its laws meet the equal protection requirement of the 14th Amendment, and that they do not restrain commerce between the states. There is no infringement of the Federal Constitution possible from the unrestrained operation of the venerable state land law supporting petitioner's claim.

But, the restraint in the District Court decree, not only serves to bring this law in conflict with the equal protection clause, but also deprives petitioner of his claim, contrary to the 5th and 10th Amendments, unless the jurisdiction allowed by Ch. IX is paramount to state powers in this relation. California lacks neither power nor duty to regulate the private tenure and rent of land within its domain, and is in no more need of federal intervention or restraint than the Congress needs state intervention to protect federal taxpayers or the holders of federal bonds.

James Madison understood the fundamental difference between Totalitarianism, and a Constitution which protects the basic equal rights of all persons.

He warned clearly against permitting any private interest trespassing the equal rights of every person, whether serf or a feudal lord of the land. Every Community, State and Nation has its conflicting economic pressure groups. When any one economic interest is allowed to acquire special privilege and paramount power, the political structure can not long endure. This is the lesson of all history. The fundamental question involved in the instant petition is whether our laws allow private holders of restricted trust land within the dominion and sovereignty of a State to keep others from having an equal opportunity to acquire, use and hold land. The evasion of ad-valorem land taxes, with or without the consent of a State Legislature, involves a denial of the equal protection guaranteed to all persons, including those now without any land.

The Homestead Act of 1862 also undertook to protect the equal rights of the landless, as the rock upon which the family farm would survive. In the debates, this purpose was expressed in these terms:

> "Instead of baronial possessions, let us facilitate the increase of independent homesteads. Let us keep the plow in the hands of the owner. Every new home that is established, the independent possessor of which cultivates his own freehold, is establishing a new republic within the old, and adding a new and a strong pillar to the edifice of the State."
>
> *Cong. Globe,* 37 Cong., 2d Sess., pt. 2, p. 1031.

The growing struggle for control of irrigated California land is partly revealed in *Hearings, Senate Public Lands Comm.,* 80th Cong., 1st Sess., on S. 912, "A Bill exempting certain projects from the land limitation provisions of the Federal Reclamation Laws," pp. 84/128, 991/1111.

Congress has authorized the Secretary of the Interior to contract with Irrigation Districts. (Acts of Feb. 21, 1911, 36 Stat. 925; Aug. 11, 1916, 39 Stat. 506; June 12, 1917, 40 Stat. 105; May 15, 1922, 42 Stat. 541; 43 Stat. 672, 43 U.S.C. 396.) Many such contracts have been made, and the recovery of many millions of Federal funds depends on the virility of the California Irrigation District Act, which also secures the claim of petitioner.

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the Court below reversed and the proceeding directed to be dismissed.

Dated, San Francisco, California,
July 14, 1948.

Respectfully submitted,
J. R. MASON,
Petitioner, Pro se.